

PART 69—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

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Subpart A—Guam

§69.11 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act (“CAA”) and a petition submitted by the Governor of Guam (“Petition”), the Administrator of the Environmental Protection Agency (“EPA”) conditionally exempts electric generating units on Guam from certain CAA requirements.

(1) A waiver of the requirement to obtain a prevention of significant deterioration (“PSD”) permit prior to construction is granted for the electric generating units identified in the Petition as Cabras Diesel No. 1, the Tenjo project, and three 6-megawatt diesel generators to be constructed at Orote, with the following conditions:

(i) Each electric generating unit shall not be operated until a final PSD permit is issued for that unit;

(ii) Each electric generating unit shall not be operated until that unit complies with all requirements of its PSD permit, including, if necessary, retrofitting with the best available control technology (“BACT”);

(iii) The PSD application for each electric generating unit shall be deemed complete without the submittal of the required one year of on-site meteorological data, however, EPA will not issue a PSD permit to such a unit prior to submission of such data or data which the EPA finds to be an equivalent and acceptable substitute; and

(iv) If any electric generating unit covered by this paragraph is operated either prior to the issuance of a final PSD permit or without BACT equipment, that electric generating unit shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of that unit.

(2) A waiver of the three nonattainment area requirements (a construction ban, the use of lowest achievable emission rate control equipment, and emission offset requirements) currently applicable to the Cabras-Piti area is granted for electric generating units with the following conditions:

(i) A tower and meteorological station shall be constructed in the Cabras-Piti area by May 1, 1993;

(ii) Meteorological data shall be collected from the Cabras-Piti station which is sufficient to run air quality models both to demonstrate no current exceedences of the primary national ambient air quality standard for sulfur dioxide (“sulfur dioxide

NAAQS”), as set forth at 40 CFR 50.4, and sufficient to submit a complete request for redesignation of the area to attainment;

(iii) Ambient sulfur dioxide monitors shall be installed and operated in accordance with the procedures set forth at 40 CFR part 58, the PSD air monitoring requirements, and any additional monitoring requested by EPA to verify the efficacy of the intermittent control strategy (“ICS”) of fuel switching;

(iv) Within three years from the effective date of this waiver, the Governor of Guam shall submit to the EPA a complete request that the Cabras-Piti area be redesignated to attainment for the sulfur dioxide NAAQS;

(v) Electric generating units to be constructed in the Cabras-Piti area must submit applications for PSD permits as though the area had been redesignated to attainment for the sulfur dioxide NAAQS;

(vi) The Cabras-Piti area electric generating units shall comply with the fuel switching ICS described in paragraph (a)(3)(i) of this section;

(vii) If the collected data and air quality analysis does not demonstrate to the EPA’s satisfaction that there are no current or likely future exceedences of the sulfur dioxide NAAQS, the EPA will so notify the Governor of Guam;

(viii) Within six months of such notification, the Governor of Guam shall submit to the EPA an implementation plan which includes a schedule of emission reductions and/or control measures that will ensure achievement of the sulfur dioxide NAAQS within one year of submission of the implementation plan; and

(ix) If the Governor of Guam fails to submit an implementation plan in a timely fashion, or if EPA disapproves that implementation plan, all electric generating units subject to the fuel switching ICS described in paragraph (a)(3)(i) of this section shall be fueled exclusively with low sulfur fuel.

(3) A waiver of the prohibition on the use of the ICS of fuel switching is granted for electric generating units with the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be the one set forth in a separate EPA document entitled Cabras-Piti Area Intermittent Control Strategy; and

(ii) This protocol may be modified by the EPA to protect against exceedences of the sulfur dioxide NAAQS and to accommodate additional electric generating units.

(b) The waiver will be periodically reviewed (at intervals no longer than three years) and, as deemed appropriate by the Administrator, can be modified or terminated at any time through rule-making procedures.

(c) Pursuant to Section 325(a) of the CAA and a petition submitted by the Governor of Guam on

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July 14, 1995 ("1995 Petition"), the Administrator of EPA conditionally exempts Guam Power Authority ("GPA") from certain CAA requirements.

(1) A waiver of the requirement to obtain a PSD permit prior to construction is granted for the electric generating unit identified in the 1995 Petition as Cabras Unit No. 4, with the following conditions:

(i) Cabras Unit No. 4 shall not operate until a final PSD permit is received by GPA for this unit;

(ii) Cabras Unit No. 4 shall not operate until it complies with all requirements of its PSD permit, including, if necessary, retrofitting with BACT;

(iii) If Cabras Unit No. 4 operates either prior to the issuance of a final PSD permit or without BACT equipment, Cabras Unit No. 4 shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of the unit.

(2) A waiver of the requirement to obtain a PSD permit prior to the operation of the unit identified in the 1995 Petition as Cabras Unit No. 3 is granted subject to the following conditions:

(i) The protocol to be followed for the ICS of fuel switching for electric generating units shall be modified to require the use of fuel oil with a sulfur content of 2.00 percent or less during offshore wind conditions. This fuel shall be fired in Cabras Power Plant Units Nos. 1 through 3 and in Piti Power Plant Units Nos. 4 and 5.

(ii) Cabras Unit No. 3 shall operate in compliance with all applicable requirements in its permits to construct and to operate as issued by Guam Environmental Protection Agency.

(iii) The waiver provisions allowing Cabras Unit No. 3 to operate prior to issuance of a PSD permit shall expire on August 15, 1996, or upon the receipt by GPA of a PSD permit for Cabras Unit No. 3, whichever event occurs first.

(3) On or before October 15, 1995, GPA shall submit to EPA, Region IX, a report concerning the operation of Cabras Unit No. 3 and the construction of Cabras Unit No. 4. The report shall contain:

(i) A summary of GPA's conclusions from its wind tunnel study;

(ii) A description of the alternatives available to assure compliance with all air quality requirements, including PSD requirements, during the operation of Cabras Units Nos. 3 and 4;

(iii) A description of the alternative GPA chooses to assure compliance with all air quality requirements, including PSD requirements, during the operation of Cabras Units Nos. 3 and 4; and

(iv) A plan of implementation by GPA.

[58 FR 43043, Aug. 12, 1993, as amended at 60 FR 48038, Sept. 18, 1995]

§ 69.12 Continuing exemptions.

(a) Effective on the expiration date of the initial eighteen month exemption provided under section 325(b) of "the Act", the Administrator of the Environmental Protection Agency (EPA) exempts the Guam Power Authority's two sixty-six megawatt oil-fired steam units which comprise the Cabras Power Plant from sulfur dioxide requirements associated with New Source Performance Standards (NSPS) under section 111 of the Clean Air Act and from the related NSPS limitation on sulfur dioxide emissions contained in the Guam SIP.

(b) The exemption will be reviewed at intervals and upon occasions to be specified by EPA (not longer than 2 years), allowing EPA to determine whether the factual circumstances upon which it is based, including commitments made by GPA in the application for extension and the continuing attainment of the National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide, have changed. The commitments include reporting requirements specified by the Guam Environmental Protection Agency (GEPA), including but not limited to strict implementation of both the monitoring (wind direction and ambient SO₂ concentration) and fuel switching portions of the control strategy, reporting to GEPA of all applications of the strategy, and reporting to GEPA of laboratory analyses of percent sulfur in all new fuel stocks acquired GPA. A finding by EPA that the source is not in compliance with the terms of the exemption will be grounds for enforcement of the terms of the exemption under section 113. A finding by EPA that factual circumstances have changed will be grounds for revocation of the exemption and enforcement of the underlying Clean Air Act requirements.

(c) It is a condition of this action that GPA provide to EPA a copy of any GPA application for rate changes or for commercial credit for construction or replacement of capital assets, simultaneously with submission of such application to the rate making authority or commercial credit institution. No later than the 90th day after a finding by EPA that the circumstances upon which the determination for continuing the exemption was originally made have changed, this exemption shall terminate unless within that time GPA submits information that it is taking all practicable steps to comply with NSPS and SIP requirements related to SO₂. EPA shall review such information under the procedures it has established and shall, as appropriate, extend or terminate the exemption.

§ 69.13 Title V conditional exemption.

(a) *Conditional exemption.* In response to a petition submitted by the Governor of Guam and pursuant to section 325(a) of the Clean Air Act (Act),

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the Administrator of the United States EPA (EPA) grants the following conditional exemptions:

(1) Guam is exempted from the requirement to develop, submit for approval, and implement an operating permit program under title V of the Clean Air Act on the condition that Guam meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (e) of this section.

(2) Except for sources listed under paragraph (a)(4) of this section, owners or operators of sources located in Guam subject to the operating permit requirements of title V of the Clean Air Act are exempt from the requirement to apply for and obtain a title V operating permit, on the condition that the owner or operator of each such source must apply for and obtain an operating permit under an EPA approved alternate program that meets the requirements of paragraph (b) of this section and subject to the provisions of paragraphs (c) through (e) of this section. The owner or operator of each such source shall apply for and obtain a permit under the alternate operating permit program by the deadlines set forth in the approved program, but in any event shall obtain a permit no later than January 13, 2003. If the owner or operator of any source has not obtained an operating permit under an alternate operating program approved by EPA for Guam by January 13, 2003, the exemption for such source shall expire and the owner or operator of such source shall become subject to the permitting requirements of 40 CFR part 71 on that date, consistent with paragraph (d)(4) of this section.

(3) Upon EPA approval of an alternate operating permit program adopted by Guam in accordance with this § 69.13, a person shall not violate any permit condition or term in a permit that has been issued under such alternate permit program.

(4) This exemption does not apply to owners or operators of major sources of hazardous air pollutants (HAPs) as defined under section 112 of the Clean Air Act or to owners or operators of solid waste incinerators subject to the title V requirements of section 129(e) of the Act. Owners or operators of major sources of HAPs or solid waste incinerators shall be subject to the requirements of 40 CFR part 71 and shall apply for and obtain a part 71 permit by the deadlines specified in 40 CFR part 71. Any owner or operator of a major source of HAPs subject to 40 CFR part 63, subpart B, shall submit a timely part 71 permit application as required by 40 CFR part 71 and 40 CFR part 63, subpart B, requesting a case-by-case section 112(g) or 112(j) Maximum Achievable Control Technology (MACT) determination.

(b) *Requirements for the alternate operating program.* Guam shall develop and submit an alternate operating permit program (the program) to

EPA for approval. Upon approval by EPA, Guam shall implement the program. The program, including the necessary statutory and regulatory authority, must be submitted by January 13, 1999 for approval. The submittal shall include the following elements:

(1) The program must contain regulations that ensure that:

(i) The permits shall include emission limits and standards, and other terms or conditions necessary to ensure compliance with all applicable federal requirements, as defined under 40 CFR 70.2.

(ii) The limitations, controls, and requirements in the permits shall be permanent, quantifiable, and otherwise enforceable as a practical matter.

(iii) Permits shall contain monitoring, record-keeping and reporting requirements sufficient to ensure compliance with applicable federal requirements during the reporting period.

(iv) The program shall require that the owner or operator of each source submit permit applications with compliance certifications describing the source's compliance status with all applicable requirements. The program shall also provide that each permit contain a requirement that the owner or operator of a source submit annual compliance certifications. The compliance certification shall contain a compliance plan, and shall contain a schedule for expeditiously achieving compliance if the source is not in compliance with all applicable requirements. The program must provide that approval of a permit with a compliance plan and schedule does not sanction noncompliance.

(2) The program shall provide for the collection of fees from permitted sources or other revenues in an amount that will pay for the cost of operation of such a program and ensure that these funds are used solely to support the program.

(3) The program shall provide for public notice and a public comment period of at least 30 days for each permit, significant permit modification, and permit renewal, and shall include submittal to EPA of each permit, significant permit modification, and permit renewal.

(4) The program shall provide EPA at least 45 days from receipt of a permit, modification, or renewal for EPA review and objection prior to issuance. The program shall provide that if EPA objects to a permit sent to EPA for review, Guam cannot issue such permit until the permit is revised in a manner that resolves EPA's objections. The program shall provide that Guam will have no more than 180 days to resolve EPA's objections and that if the objections are not resolved within that time period, EPA shall issue the permit under 40 CFR part 71.

(5) The program shall provide that all documents other than confidential business information will be made available to the public.

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(6) The program shall provide Guam with the authority to enforce permits, including the authority to assess civil and criminal penalties up to \$10,000 per day per violation and to enjoin activities that are in violation of the permit, the program, or the Act without first revoking the permit.

(7) The program shall require that owners or operators of nonmajor sources of hazardous air pollutants that are required to obtain title V permits, and owners or operators of major sources of all other air pollutants as defined at 40 CFR 70.2 that are exempted from 40 CFR part 71 under paragraph (a) of this section, obtain an operating permit under the approved program. The program shall include a schedule for issuing permits to all subject sources within three years of EPA approval of the program.

(8) The program shall include a system of regular inspections of permitted sources, a system to identify any unpermitted major sources, and guidelines for appropriate responses to violations.

(9) The program shall provide for the issuance of permits with a fixed term that shall not exceed five years.

(10) The program shall allow Guam or the EPA to reopen a permit for cause. The program shall provide that if EPA provides Guam with written notice that a permit must be reopened for cause, Guam shall issue a revised permit within 180 days (including public notice and comment) that sufficiently addresses EPA's concerns. The program shall provide that if Guam fails to issue a permit that resolves EPA's concerns within 180 days, then EPA will terminate, modify, or revoke and reissue the permit under part 71 after providing the permittee and the public with notice and opportunity for comment.

(c) *State Implementation Plan (SIP) submittal.* In conjunction with the submittal of the alternative operating permit program, Guam shall, no later than January 13, 1999 submit a revision to its SIP that provides that a person shall not violate a permit condition or term in an operating permit that has been issued under an EPA approved alternate operating permit program adopted by Guam pursuant to the exemption authorized in this § 69.13.

(d) *Expiration and revocation of the exemption.* This exemption shall expire or may be revoked under the following circumstances:

(1) If Guam fails to submit an alternate operating permit program by January 13, 1999, the exemption shall automatically expire with no further rulemaking and 40 CFR part 71 shall become effective for all subject sources in Guam on that date.

(2) In the event that EPA disapproves Guam's alternate operating permit program because the program does not meet the requirements set forth in paragraph (b) of this section, EPA will revoke the exemption by rulemaking.

(3) If, by January 13, 2003, the owner or operator of any subject source has not obtained a federally enforceable operating permit under an EPA approved program, the exemption shall automatically expire for such source and such source shall be subject to the permitting requirements of 40 CFR part 71. Guam will work with EPA to identify such sources prior to expiration of the exemption under this paragraph (d).

(4) EPA shall revoke the exemption in its entirety through rulemaking if Guam does not adequately administer and enforce an alternate operating permit program approved by EPA.

(5) EPA shall revoke the exemption by rulemaking with respect to the owner or operator of any source if, during the 45-day review period, EPA objects to issuance of a permit and Guam fails to resolve EPA's objections within 180 days. EPA shall also revoke the exemption by rulemaking for the owner or operator of any source in the event that EPA reopens a permit for cause and Guam does not issue a permit that resolves the concerns as set forth in EPA's notice to reopen within 180 days.

(6) EPA reserves its authority to revoke or modify this exemption in whole or in part.

(e) *Scope of the exemption.* This exemption applies solely to the requirement that an owner or operator obtain an operating permit under title V of the Clean Air Act and the requirement that Guam implement a title V permit program. In addition, this exemption does not apply to owners or operators of sources set forth in paragraph (a)(4) of this section. Owners and operators of air pollutant sources are required to comply with all other applicable requirements of the Clean Air Act. For purposes of complying with any applicable requirement that is triggered or implemented by the approval of a title V permit program, the approval date for owners or operators to which this exemption applies shall be the date that EPA approves the alternate program for each territory or, for owners or operators of sources that are subject to 40 CFR part 71, the approval date shall be the effective date of 40 CFR part 71, which is July 31, 1996.

[61 FR 58289, Nov. 13, 1996; 61 FR 66077, Dec. 16, 1996]

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